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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)

In re CASEY B., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CASEY B.,

Defendant and Appellant.

C041362

(Super. Ct. No.
2165204)

On July 23, 2001, based upon Casey B.'s admission to charges of receiving stolen property (Pen. Code, § 496) and possession of a dirk or dagger (Pen. Code, § 12020, subd. (a)), he was declared a ward of the juvenile court and placed on home probation. Two probationary conditions were that he "not use or possess any paraphernalia or restricted drug unless prescribed" and he attend school regularly.

On March 28, 2002, the probation officer filed a notice to revoke the minor's probation (Welf. & Inst. Code, § 777, subd.

(a) (2)) because he had tested positive for "methamphetamine" and had failed to attend school as directed. The following day, pursuant to a bargain, the minor agreed to admit being in violation of his probation if the prefix "meth" was stricken from the petition, leaving a charge that he had tested positive for "amphetamine."¹ The People, by their silence, accepted the bargain, and the court, by accepting the minor's admission, approved it.² The minor was committed to a camp placement.

On appeal, the minor contends (1) the juvenile court was precluded from proceeding on the petition because the alleged violation constituted a criminal offense, and (2) the admission must be set aside due to the court's failure to find a factual basis for the admission. We reject both contentions.

DISCUSSION

I

Welfare and Institutions Code section 777 (hereafter section 777), which was operative at the time of the minor's violation (Mar. 21, 2002), provides in relevant part: "An order changing or modifying a previous order by removing a minor from the physical custody of a parent . . . shall be made only after

¹ The reporter's transcript shows that the minor actually admitted that he tested positive for "methamphetamine;" however, it is clear from the agreement and as explained at the disposition hearing that the minor was admitting a positive test for "amphetamine."

² When the minor disputed the allegation that he had failed to attend school as directed, that allegation was stricken.

a noticed hearing. [¶] (a) The notice shall be made as follows: [¶] . . . [¶] (2) By the probation officer or the prosecuting attorney if the minor is a court ward or probationer under Section 602 in the original matter and the notice alleges a violation of a condition of probation not amounting to a crime. The notice shall contain a concise statement of facts sufficient to support this conclusion. [¶] . . . [¶] (c) The facts alleged in the notice shall be established by a preponderance of the evidence at a hearing to change, modify, or set aside a previous order. . . .”

In *In re Marcus A.* (2001) 91 Cal.App.4th 423, the court held section 777, subdivision (a)(2) applied only to violations of probation not amounting to a crime. (*Id.* at p. 427.) Relying on *Marcus A.*, the minor claims because the petition alleged he had tested positive for methamphetamine, namely, a violation of Health and Safety Code section 11550, he was charged with a criminal offense. Therefore, he concludes, subdivision (a)(2) of section 777 was inapplicable to him.

Following the briefing in this case, the California Supreme Court rendered its decision in *In re Eddie M.* (2003) 31 Cal.4th 480, rejecting *Marcus A.*'s holding and concluding probation violations amounting to crimes could be charged under section 777, subdivision (a)(2). (*In re Eddie M.*, *supra*, 31 Cal.4th at p. 502.) The matter having been decided adversely to the minor by our state's highest court, the issue is closed. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

II

Rule 1487(f)(6) of the California Rules of Court requires the juvenile court, upon accepting a minor's admission to allegations in a Welfare and Institutions Code section 602 petition, to find a factual basis for the admission.³

The minor argues this procedure "appl[ies] with equal force to an admission to an allegation of violation of probation under section 777." Because the court herein failed to ascertain whether there was a factual basis for his admission, the minor concludes, his admission must be set aside.

Rule 1487 applies to petitions filed under Welfare and Institutions Code sections 601 and 602, and makes no reference whatsoever to findings required on admission of petitions filed under Welfare and Institutions Code section 777. The minor has not cited any rule, statute or case law requiring a factual finding supporting an admission to an allegation of probation violation, and our research has disclosed none. We conclude no such finding is required.

However, if the court were required to find a factual basis for the admission, the error would be harmless in these circumstances. The petition referred to the "Redwood Toxicology Lab report 020321-08386," which was contained in the court file, and showed the minor tested positive for "Amphetamines,"

³ All further references to rules are to the California Rules of Court.

"[c]onfirmed as methamphetamine by TLC." This was ample factual support for the minor's admission.

DISPOSITION

The judgment (order committing the minor to camp placement) is affirmed.

NICHOLSON, J.

We concur:

DAVIS, Acting P.J.

HULL, J.